

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	Case No. 98-03248
DARRIN FROST and)	
KIMBERLY FROST,)	SUMMARY ORDER
)	
Debtors.)	
_____)	

Background and Facts

Creditor Blazer Financial Services ("Blazer") objects to the Chapter 7 Trustee's Final Accounting (Docket No. 29) because the Trustee does not propose to pay anything to Blazer on account of its proof of claim timely filed in this case on June 18, 1999. A hearing on Blazer's objection was held on August 8, 2000, and the issues taken under advisement.¹

The Chapter 7 Trustee's Final Accounting does not propose to pay Blazer anything on its claim because, as the case file reflects, on December 28, 1999, the Trustee filed an objection to allowance of Blazer's proof of claim. (Docket No. 23). The objection alleged that because Blazer's claim was filed

¹ The Court entered an order approving the Trustee's Final Accounting on July 7, 2000. However, Blazer's objection had been filed on June 23, 2000, and was not considered by the Court. To the extent the objection has merit, the Court would of course set aside the order as having been entered by administrative error .

both as a secured and unsecured claim, and because the proof of claim included no information on the manner in which the value of the collateral for the debt could be calculated, the claim should be disallowed for distribution purposes. A copy of the Trustee's objection was mailed to Blazer the same day at the address set forth in the proof of claim. No response to the objection was received by the Trustee or the Court, and on February 10, 2000, an order was entered sustaining the Trustee's objection, disallowing the claim. (Docket No. 26).

Blazer contends it should be allowed to participate as an unsecured creditor in this case. It has no remaining security for the debt, Debtors' having allegedly wrongfully disposed of its collateral prior to bankruptcy. While Debtors agreed to reaffirm the claim to the extent of \$1,000 (Docket No. 10), Blazer wants to participate for the balance of its indebtedness of \$2001.40. Blazer contends that the order disallowing its proof of claim was improper because the Trustee failed to serve his objection on Blazer's counsel, Charles Johnson ("Counsel"), who represented Blazer in February, 1999, in connection with negotiating the reaffirmation agreement with Debtors. Blazer, on this basis, asks for relief from the order disallowing its claim.

Blazer concedes that while the Reaffirmation Agreement it entered

with Debtors was filed with the Court on February 2, 1999, there is nothing in the Court's file or otherwise to suggest the Trustee was aware Blazer had counsel in the case. Moreover, Counsel had not filed a written request with the Clerk or Trustee instructing that notices be directed to him. Trustee objects to Blazer's motion. He does not want to pay Blazer because given the small amounts involved, it would be counterproductive to amend and renotice the Final Accounting.²

Under these circumstances, was Blazer's claim properly disallowed, and should Blazer be allowed to participate in distributions from the Trustee? Should the Court reconsider disallowance of Blazer's claim even if it was appropriately disallowed in the first instance?

Discussion

Federal Rule of Bankruptcy Procedure 3007 provides that a copy of an objection to the proof of claim shall be mailed "to the creditor" Rule 9010(a)(1) provides a party may "appear in a case under the Code and act either in the entity's own behalf or by an attorney authorized to practice in the court." An attorney appearing for a party must "file a notice of appearance with

² If Blazer's claim were allowed on a pro-rata basis with those of other unsecured creditors, Blazer could expect to receive less than \$250.00 in dividends.

the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.” Fed. R. Bankr. P. 9010(b).³

Counsel concedes he filed no notice of appearance on behalf of Blazer, nor did he file a written request for notice. In spite of this, Counsel asserts he made a sufficient appearance by representing Blazer in the connection with the reaffirmation agreement proceedings to entitle him to receipt of notice of the Trustee’s objection to Blazer’s claim. No court within the Ninth Circuit has addressed Rule 9010(b), nor do the Local Bankruptcy Rules specify what constitutes an appearance “otherwise noted in the record.” Therefore, the Court will look to cases from outside this jurisdiction for guidance.

In *In re Alexander’s Inc.*, 176 B.R. 715, 720 (Bankr. S.D.N.Y. 1995), the debtor in possession sent notice of the bar date for proofs of claim to the creditor, but failed to notice creditor’s attorney. The court found that an attorney’s single appearance in the record during an abandonment and lease rejection hearing was not equivalent to filing a notice of appearance, and did not entitle the attorney to notice for all other matters in the bankruptcy proceeding

³ The Court notes Rule 2002 expressly allows agents of parties to request the clerk to send the agent notice. “All notices required to be mailed under *this rule* . . . shall be addressed as such entity or an authorized agent may direct in a filed request . . .” Fed. R. Bankr. P. 2002(g) (emphasis added). But, Rule 2002 does not apply to objections to claims, Rule 3007 provides for notice for objections to proofs of claims.

because of the limited nature of the attorney's representation of the creditor. *Id.* at 721. In another chapter 11 case, the court found the debtor in possession should have provided a creditor's attorney with notice of the filing of an amended chapter 11 plan where the creditor's attorney had made several appearances in the record, and the debtor in possession had actual knowledge of the creditor's representation by counsel. *In re Birdneck Apartment Associates, II, L.P.*, 152 B.R. 65, 68, note 6 (Bankr. E.D. Va. 1993).⁴

Here, there is little reason to find that Counsel made a general appearance for Blazer on this record. Counsel's only connection with the case was representing Blazer in connection with negotiating and obtaining court approval of the reaffirmation agreement with Debtors. Counsel did not appear before the Court in any hearing regarding the reaffirmation because hearing was waived. (Docket No. 11). Nor, is there any evidence the Trustee had actual knowledge of Counsel's representation of Blazer. The order approving the reaffirmation agreement (Docket No. 11) was mailed to Counsel and Debtor's attorney; the certificate of mailing does not include the Trustee. As there was no hearing, there is no other reason to believe the Trustee had actual knowledge of Counsel's representation of Blazer.

⁴ The attorney for the creditor did not file a formal notice of appearance in either of these cases.

There is no other basis for Blazer's objection to the Final Accounting. The Trustee provided proper notice to Blazer regarding the Trustee's objection to Blazer's proof of claim as required by Rule 3007 and Blazer made no response. Blazer's claim was properly disallowed in the absence of a response to the objection. Finding no merit in Blazer's objection to the Final Accounting, the Court will not disturb the previous order approving the Trustee's Final Accounting. In addition, under the circumstances, the Court also declines to revisit the disallowance of Blazer's claim on the merits, as it was properly disallowed in the first instance.

For these reasons, Blazer's objection to the Trustee's Final Accounting is hereby **DENIED**.

IT IS SO ORDERED.

DATED This _____ day of August, 2000.

JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Office of the U.S. Trustee
P. O. Box 110
Boise, Idaho 83701

L. Charles Johnson, Esq.
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Pocatello, Idaho 83204

L. D. Fitzgerald
P. O. Box 6199
Pocatello, Idaho 83205

CASE NO.: 98-03428

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED:

By _____
Deputy Clerk